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Gibby Novelties, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO, an individual	)	CASE NO. C 07 3947 SI
)	
Plaintiff,	)	Declaration of David Y. Wong in Support of
	)	Motion for Summary Judgment of Defendants
vs.	)	William Tull, Daniel Gibby and Gibby Novelties,
	)	LLC
WILLIAM TULL; DANIEL GIBBY;	)	(FRCP RULE 56(C))
GIBBY NOVELTIES, LLC dba ARSENIC)	
& APPLE PIE, a California Limited	)	April 25, 2008
Liability Corporation and DOES 1 through	)	9:00 a.m.
20, inclusive,	)	Judge Illston, Courtroom 10
)	
Defendants.	)	The Federal Building
	)	450 Golden Gate Avenue
	)	San Francisco, CA 94102
<u>And related Counter-Claim</u>)	

Complaint filed: August 1, 2007

I, David Y. Wong, declare:

1. I am an attorney licensed by the State of California, admitted to practice before this
Court since 1982, and I am co-counsel for Defendants William Tull, Daniel Gibby and
MONTWILL V. TULL, ET AL. USDC Action No. C 07 3947 SI

Declaration of Wong – Motion for Summary Judgment of Defendants Tull, Gibby and Gibby Novelties, LLC

1 Gibby Novelties, LLC. I am authorized by my clients to make this Declaration in support of their
2 Motion for Summary Judgment, filed herewith.

3 2. On the afternoon of March 10, 2008, I attended the deposition of the Plaintiff, Paul
4 Montwillo, in this action. Mr. Montwillo was represented in his deposition by his attorney,
5 Stephen A. Sommers.

6 3. The Memorandum of Points and Authorities contains citations to deposition
7 testimony of Plaintiff Paul Montwillo. Attached hereto and incorporated by reference herein are
8 true and correct copies of the following deposition transcript pages, in full, wherein each of the
9 cited testimony excerpts may be found. The pages attached are arranged in numerical order,
10 as follows: Pages 41, 44, 67, 68 and 108.

11
12
13 I certify under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct, and that I am able to testify competently thereto.

15 Executed in Mill Valley, California on March 21, 2008.

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David Y. Wong

MONTWILLO DEPOSITION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO, an
individual,

Plaintiff,

vs.

WILLIAM TULL; DANIEL GIBBY; GIBBY
NOVELTIES, LLC dba ARSENIC & APPLE
PIE, a California Limited
Liability Corporation and DOES 1
through 20, inclusive,

Defendants.

No. C 07 3947 SI

Pages 1 thru 124

Volume I

Deposition of

PAUL MONTWILLO

March 10, 2008

Reported By:

JAN BROWN JONES # 4685

COPY

JAN BROWN & ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

701 Battery St., 3rd Floor, San Francisco, California 94111

(415) 981-3498 or (800) 522-7096

14:57

1

Q. So what you were doing was, you were creating the

14:04:59

2

prototype and they would then attempt to make a

14:05:04

3

copy of that. You were testing back and forth to

14:05:07

4

make sure you got a final version that everyone was

14:05:10

5

satisfied with. Is that accurate?

14:05:13

6

A. Yeah. I was just trying to get them to accurately

14:05:16

7

copy my work, yeah.

14:05:17

8

Q. Once you had reached agreement, was it your

14:05:19

9

understanding that once you had reached an

14:05:20

10

agreement and you were satisfied with what they had

14:05:23

11

done, they would then go into mass production to

14:05:26

12

make a number of dolls?

14:05:27

13

A. Yes.

14:05:29

14

Q. Okay. And were they shipping finished packaged

14:05:32

15

dolls back or was packaging done here?

14:05:35

16

A. It was done there.

14:05:36

17

Q. It was done there. So you got basically boxes

14:05:40

18

filled with individual packaged boxes.

14:05:43

19

A. Yes. I had to design the packaging as well.

14:05:47

20

Q. And you designed the packaging as well.

14:05:50

21

A. Yes.

14:05:50

22

Q. Now, this is taking place -- is this taking place,

14:05:54

23

this process of going back and forth with -- was it

14:05:58

24

China?

14:05:59

25

A. China.

1 8:05 1

14:08:05 2

(Off the record at 2:08 p.m and

14:08:09 3

back on the record at 2:13 p.m.)

14:10:47 4

14:13:42 5

MR. GREENBERG: Are you all set?

14:13:44 6

THE WITNESS: All set.

14:13:44 7

MR. GREENBERG: Back on the record.

14:13:49 8

Q. Mr. Montwillo, before our break you indicated that

14:13:51 9

you licensed your designs, I believe you said to

14:13:56 10

the corporation. I think in that respect were you

14:14:03 11

referring to the partnership and/or the LLC of

14:14:06 12

Arsenic & Apple Pie?

1 4:08 13

A. Yes.

14:14:09 14

Q. And when you say you "licensed your designs," was

14:14:16 15

this a written license?

14:14:19 16

A. No. I let the company use my work.

14:14:22 17

Q. Okay. When you indicate you let the company use

14:14:24 18

your work, is this what you mean by licensed?

14:14:31 19

A. Yes. I don't know like legal terms if this is --

14:14:39 20

you know. There was no written license.

14:14:44 21

Q. Okay. When you say you let the company use your

14:14:48 22

work or that you licensed it, I need to know from

14:14:53 23

you since there wasn't anything in writing, what

14:14:55 24

the terms of that license were; how long was the

1 4:58 25

license of the designs to run?

PAUL MONTWILLO - MARCH 10, 2008

17:05 1 in somebody's head, then I'm going to say yes,
14:47:07 2 don't answer that.

14:47:07 3 MR. GREENBERG: He can decline if there's
14:47:09 4 a privilege, but otherwise you can't instruct him
14:47:11 5 not to answer.

14:47:12 6 THE WITNESS: No.

14:47:13 7 MR. SOMMERS: I'm instructing him not --

14:47:16 8 MR. GREENBERG:

14:47:24 9 Q. Now, you indicated that during the operation of the
14:47:31 10 partnership, the LLC, that you were involved in
14:47:35 11 designing the packaging for the dolls. Is that
14:47:40 12 right?

14:47:41 13 A. Yes.

14:47:41 14 MR. GREENBERG: Let's take a moment.

14:48:16 15
14:48:16 16 (Off the record at 2:48 p.m. and
14:48:19 17 back on the record at 2:50 p.m.)

14:48:20 18
14:50:38 19 (Whereupon photocopies of Doll
14:50:38 20 boxes were marked for
14:50:40 21 identification as Defendants'
Exhibit No. 5.)

14:50:47 22 MR. GREENBERG:

14:50:47 23 Q. Mr. Montwillo, I'm going to hand you two boxes
14:50:52 24 first, which I'll represent for purposes of the
14:50:56 25 record are the first and second edition of the

50:59 1 Trailer Trash Collectible Doll and ask you to take
14:51:05 2 a look at both of these.

14:51:07 3 Have you seen these before?

14:51:13 4 A. Yeah.

14:51:13 5 Q. Are these packages that you designed?

14:51:16 6 A. Yes, they are.

14:51:19 7 Q. And what I am going to do now is hand you what has
14:51:21 8 been marked as Defendants' Exhibit No. 5, and I'll
14:51:25 9 ask you to take a look at that with the boxes in
14:51:28 10 front of you and I'll represent for purposes of the
14:51:30 11 record, that this is a photocopy of the back of
14:51:36 12 each of the two boxes. And what I want you to do
51:38 13 is just preliminarily confirm for me that this is
14:51:43 14 an accurate photocopy, so we can work from the
14:51:47 15 documents rather than the boxes because we can't
14:51:50 16 attach the boxes to the deposition record. Okay?

14:51:52 17 So all I am trying to do is to verify --
14:51:53 18 there's two pages here --

14:51:54 19 A. Right.

14:51:53 20 Q. -- one is for one of the boxes for the first
14:51:57 21 edition and one is for the second. And I just want
14:52:00 22 to verify that I have got it right.

14:52:03 23 A. Yeah. It's a bit illegible, the photocopy, but --

14:52:07 24 Q. Yes, it's hard to read in the photocopy. But to
52:07 25 your understanding this is correct?

03:19 1 A. Yes.

16:03:23 2 MR. SOMMERS: I'll object to the extent
16:03:25 3 that that requests a legal conclusion.

16:03:38 4 MR. GREENBERG:

16:03:43 5 Q. Mr. Montwillo, your counsel filed on your behalf
16:03:46 6 what are referred to by lawyers as initial
16:03:52 7 disclosures, and those initial disclosures include
16:03:56 8 lists of witnesses and other elements in the case.
16:03:59 9 I need to find out who some of these people are, so
16:04:03 10 I'm going to ask you some questions about that.

16:04:05 11 I'm not asking you about any of the legal
16:04:07 12 conclusions, if any there are in this disclosure,
16:04:10 13 but I need to find out who these people are. All
16:04:13 14 right?

16:04:14 15 A. Okay.

16:04:14 16 Q. Can you tell me, please, who Eloise Clark is?

16:04:20 17 A. No. Eloise Clark?

16:04:23 18 Q. E-L-O-I-S-E Clark it says will testify that Gibby
16:04:28 19 Novelties, LLC sold the copyrighted dolls. Do you
16:04:32 20 know who that person is?

16:04:34 21 MR. SOMMERS: I think she's the
16:04:35 22 accountant or bookkeeper for Gibby Novelties.

16:04:40 23 MR. GREENBERG:

16:04:41 24 Q. Would it be fair to say you don't know who that
16:04:43 25 person is?